

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SIRUS SHAFIGI,) Case No. CV 08-5469-OP
Plaintiff,)
v.) MEMORANDUM OPINION; ORDER
MICHAEL J. ASTRUE,)
Commissioner of Social Security,)
Defendant.)

The Court¹ now rules as follows with respect to the disputed issues listed in the Joint Stipulation (“JS”).²

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¹ Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before the United States Magistrate Judge in the current action. (See Dkt. Nos. 10, 11.)

² As stated in the Court’s Case Management Order, the decision in this case is being made on the basis of the pleadings, the Administrative Record, and the Joint Stipulation filed by the parties. In accordance with Rule 12(c) of the Federal Rules of Civil Procedure, the Court has determined which party is entitled to judgment under the standards set forth in 42 U.S.C. § 405(g).

I.

DISPUTED ISSUES

As reflected in the Joint Stipulation, the disputed issues which Plaintiff raises as the grounds for reversal and/or remand are as follows:

1. Whether the Administrative Law Judge (“ALJ”) sustained his burden of proof at step 5 of the sequential evaluation process, or whether the ALJ properly determined that Plaintiff can engaged in other types of substantial gainful work existing in the national economy;
 2. Whether the ALJ properly assessed Plaintiff’s residual functional capacity (“RFC”) at step 4 of the sequential evaluation process;
 3. Whether the ALJ properly determined Plaintiff met Listing 3.02(C)(2); and
 4. Whether the ALJ properly evaluated Plaintiff’s credibility.³
- (JS at 4.)

II.

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to determine whether the Commissioner’s findings are supported by substantial evidence and whether the proper legal standards were applied. DeLorme v. Sullivan, 924 F.2d 841, 846 (9th Cir. 1991). Substantial evidence means “more than a mere scintilla” but less than a preponderance. Richardson v. Perales, 402 U.S. 389, 401, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971); Desrosiers v. Sec’y of Health & Human Servs., 846 F.2d 573, 575-76 (9th Cir. 1988). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Richardson, 402 U.S. at 401 (citation omitted). The

³ Plaintiff argues that the ALJ erred by rejecting Plaintiff’s testimony within his RFC claim. (JS at 15-16.) The Court will address the issue of Plaintiff’s credibility separately.

1 Court must review the record as a whole and consider adverse as well as
 2 supporting evidence. Green v. Heckler, 803 F.2d 528, 529-30 (9th Cir. 1986).
 3 Where evidence is susceptible of more than one rational interpretation, the
 4 Commissioner's decision must be upheld. Gallant v. Heckler, 753 F.2d 1450,
 5 1452 (9th Cir. 1984).

6 III.

7 DISCUSSION

8 A. The ALJ Failed to Sustain His Burden of Proof at Step 5 of the 9 Sequential Evaluation.

10 Plaintiff contends that the ALJ erroneously determined that Plaintiff could
 11 perform other types of substantial gainful work existing in the national economy at
 12 step 5 of the sequential evaluation. (JS at 4-6.) Specifically, Plaintiff argues that
 13 the occupations identified by the vocational expert ("VE") conflict with Plaintiff's
 14 limitation from performing work at or above shoulder level. (Id.) Plaintiff also
 15 argues that the ALJ posed an incomplete hypothetical to the VE. (Id. at 5.)

16 1. Background.

17 Here, the ALJ assessed Plaintiff's RFC⁴ as follows:

18 The claimant has the following residual functional capacity: he can
 19 perform light work, or work involving lifting objects weighing up to 20
 20 pounds occasionally and up to ten pounds frequently. He is further
 21 limited to no more than occasional postural changes and cannot perform
 22 work at or above shoulder level or engaged in heavy pushing and pulling
 23 with his upper extremities.

24 (Administrative Record ("AR") at 25.) Thus, Plaintiff is able to perform a limited
 25 range of light work.

26
 27 ⁴ The Court notes that Plaintiff disputes the ALJ's RFC finding. (JS at 11-
 28 16.) The Court will discuss this contention below. See infra, Discussion Part
 III.B.

1 At the hearing, the ALJ and Plaintiff's attorney engaged in the following
2 discussion with the VE:

3 ALJ: [Assume Plaintiff to be] capable of performing light work with
4 mild pain, which would include the ability to stand or walk six hours out
5 of eight hours, sit six hours out of eight hours, and occasionally climb,
6 balance, stoop, kneel, crouch and crawl And there should be no
7 repetitive, overhead reaching or push/pull. So would there be entry
8 level work he could perform? If so, what would the number of the jobs
9 be?

10 VE: Yes, there would be jobs. And a person with that vocational
11 profile would be able to perform jobs such as ticket taker - - 211.467-
12 030 . . . SVP two, light And there's approximately . . . 4,000 jobs
13 in L.A., Orange and Riverside counties and 80,000 nationally. Could
14 work as an [sic] cashier - - 211.462-010 - - SVP two, light. 44,000 jobs
15 locally. 1,600,000 nationally. Could work as a storage facility clerk - -
16 295.367-026 - - SVP two, light. 6,700 jobs locally and 128,000
17 nationally.

18 ALJ: And how about sedentary jobs?

19 VE: Would be able to perform the full range of sedentary unskilled
20 employment. And that would include jobs such as order clerk - -
21 209.567-014 - - 2,000 - - that's an SVP two, sedentary. 2,000 jobs
22 locally. 20,000 nationally. Call out operator - - 237.637-014 - - SVP
23 two, sedentary. 1,500 locally. 14,000 nationally. . . .

24 Plaintiff's Attorney: Of the jobs that you mentioned, what are the
25 physical requirements of those jobs?

26 VE: Well, the light ones require - - really match the hypothetical - - the
27 ability to stand and walk six to eight hours of a day. Some of them
28 require occasional climbing, bending, and stooping - - some did not.

1 And there's no overhead reaching required. The sedentary ones are
2 sedentary - - sitting . . . six of eight hours a day, lifting no more than 10
3 pounds.

4 (Id. at 51-53.)

5 **2. Applicable Law.**

6 "In order for the testimony of a VE to be considered reliable, the
7 hypothetical posed must include 'all of the claimant's functional limitations, both
8 physical and mental' supported by the record." Thomas v. Barnhart, 278 F.3d 947,
9 956 (9th Cir. 2002) (quoting Flores v. Shalala, 49 F.3d 562, 570-71 (9th Cir.
10 1995)). Hypothetical questions posed to a VE need not include all alleged
11 limitations, but rather only those limitations which the ALJ finds to exist. See,
12 e.g., Magallanes v. Bowen, 881 F.2d 747, 756-57 (9th Cir. 1989); Copeland v.
13 Bowen, 861 F.2d 536, 540 (9th Cir. 1988); Martinez v. Heckler, 807 F.2d 771,
14 773-74 (9th Cir. 1986). As a result, an ALJ must propose a hypothetical that is
15 based on medical assumptions, supported by substantial evidence in the record,
16 that reflects the claimant's limitations. Osenbrock v. Apfel, 240 F.3d 1157,
17 1163-64 (9th Cir. 2001) (citing Roberts v. Shalala, 66 F.3d 179, 184 (9th Cir.
18 1995)); see also Andrews v. Shalala, 53 F.3d 1035, 1043 (9th Cir. 1995) (although
19 the hypothetical may be based on evidence which is disputed, the assumptions in
20 the hypothetical must be supported by the record).

21 **3. Analysis.**

22 Here, the ALJ posed a hypothetical to the VE including a limitation, inter
23 alia, for "no repetitive, overhead reaching or push/pull." (AR at 51.) In the
24 decision, the ALJ restricts Plaintiff from all "work at or above shoulder level."
25 (Id. at 25.) While the hypothetical includes work above shoulder level, it fails to
26 account for work at shoulder level. As a result, the ALJ posed an incomplete
27 hypothetical to the VE. Moreover, the jobs identified by the vocational expert all
28 require frequent or occasional reaching. There is no indication whether the

1 reaching includes at or above shoulder level reaching.

2 Based on the foregoing, the Court finds that the ALJ committed legal error
3 by failing to pose a complete hypothetical to the VE to include a limitation for
4 work at shoulder level. The Court also finds that the ALJ failed to resolve an
5 apparent conflict between the jobs identified by the VE and the Plaintiff's RFC.
6 On remand, the ALJ will have an opportunity to address these issues again and
7 should consider these issues in determining the merits of Plaintiff's case.

8 **B. The ALJ's Residual Functional Capacity Determination is Supported**
9 **by Substantial Evidence.**

10 Plaintiff contends that the ALJ erred by failing to consider all the relevant
11 evidence in determining Plaintiff's RFC. (JS at 11-16.)⁵

12 **1. Applicable Law.**

13 In determining a plaintiff's RFC, an ALJ must consider all relevant
14 evidence in the record, including medical records, lay evidence, and the effects of
15 symptoms, including pain, that are reasonably attributed to a medically
16 determinable impairment. Robbins v. Social Security, 466 F.3d 880, 883 (9th Cir.
17 2006) (citations omitted). Careful consideration should be given to any evidence
18 about symptoms because subjective descriptions may indicate more severe
19 limitations or restrictions than can be shown by medical evidence alone. Id.

20 **2. Analysis.**

21 As stated above, the ALJ found that Plaintiff has the RFC to perform light
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23 ⁵ Plaintiff also argues that the ALJ failed to account for Plaintiff's inability
24 to stay awake in the RFC finding. (JS at 13.) Plaintiff testified he fell asleep two
25 or three times per day for thirty to forty-five minutes. (AR at 53-54.) At the
26 hearing, the VE testified that an individual with this sleep limitation would be
27 unable to perform the jobs set forth at the hearing. (Id. at 54.) The ALJ, however,
28 did not find Plaintiff's testimony credible, and thus, the ALJ did not include this
limitation in the RFC finding. (Id. at 22-25); see infra, Discussion Part III.D.
Thus, Plaintiff's argument is without merit.

1 work, “limited to no more than occasional postural changes and cannot perform
2 work at or above shoulder level or engaged in heavy pushing and pulling with his
3 upper extremities.” (AR at 25.)

4 Here, in determining Plaintiff’s RFC, the ALJ considered all of the
5 evidence, including statements and findings of the treating and examining
6 physicians, consultative physicians, and other medical consultants. (*Id.* at 21-25.)
7 The Court agrees with the Commissioner that the ALJ relied upon findings from
8 medical sources, all essentially in agreement regarding Plaintiff’s functional
9 limitations. (JS at 7; AR at 21-22, 269-70, 307, 310-11, 335-37, 391-443, 483-
10 84.) Moreover, the ALJ also found Plaintiff’s allegations of total disability and
11 subjective pain symptoms not entirely credible, in support of the RFC assessment.
12 See infra, Discussion Part III.D. Based on the foregoing, the Court finds no error
13 in the ALJ’s finding that Plaintiff was capable of performing a limited range of
14 light exertional work.

15 **C. The ALJ Did Not Err in Finding that Plaintiff’s Condition Did Not**
16 **Meet or Equal Any Listing.**

17 Plaintiff claims that the ALJ erred by failing to determine that his
18 impairments equaled a listing. (JS at 12.) The Court disagrees.

19 **1. Applicable Law.**

20 At the third step of the sequential analysis, the ALJ must determine whether
21 a claimant’s impairment meets or equals an impairment listed in the “Listing of
22 Impairments” (“Listings”). See 20 C.F.R. Part 404, Subpt. P, App. 1; see also
23 Stout v. Comm’r, Soc. Sec. Admin., 454 F.3d 1050, 1052 (9th Cir. 2006) (citing
24 20 C.F.R. §§ 404.1520, 416.920); Tackett v. Apfel, 180 F.3d 1094, 1098-99 (9th
25 Cir. 1999). The Listings set forth certain impairments which are presumed to be
26 of sufficient severity to prevent the performance of work. See C.F.R. §§
27 404.1525(a), 416.925(a). If a claimant has an impairment which meets or equals a
28 listed impairment, disability is presumed, and benefits are awarded. See 20 C.F.R.

§§ 404.1520(d), 416.920(d); Barker v. Sec’y of Health & Human Servs., 882 F.2d 1474, 1477 (9th Cir. 1989). An impairment “meets” a listed impairment if it is in the Listings. See 20 C.F.R. §§ 404.1520(d), 416.920(d)

The claimant has the burden of proving disability, including disability based on the Listing. Roberts, 66 F.3d at 182; Vick v. Comm’r of Soc. Sec. Admin., 57 F. Supp. 2d 1077, 1087 (D. Or. 1999). The mere diagnosis of a listed condition does not establish that a claimant “meets” the Listings. Young v. Sullivan, 911 F.2d 180, 183-84 (9th Cir. 1990). “For a claimant to show that his impairment matches a listing, it must meet all of the specified medical criteria. An impairment that manifests only some of those criteria, no matter how severely, does not qualify.” Sullivan v. Zebley, 493 U.S. 521, 530, 110 S. Ct. 885, 107 L. Ed. 2d 967 (1990); see also 20 C.F.R. § 404.1525(d). Thus, the ALJ must find that the claimant has an impairment which corresponds in diagnosis, severity, and duration to a listed impairment.

2. Analysis.

Here, Plaintiff contends that his medically determinable impairment met Listing 3.02(C)(2). (JS at 12.) Plaintiff identifies two instances, March 26 and 28, 2004, where Plaintiff’s oxygen levels indicated a decrease in lung capacity and met the requirements of Listing 3.02(C)(2). (Id.) On March 26, 2004, Plaintiff received a “Blood Gas Report,” where his “partial pressure of carbon dioxide” (“PCO2”) measured at 38.1 mm. Hg, and his “partial pressure of oxygen” (“PO2”) measured at 50 mm. Hg. (AR at 254); see also 20 C.F.R. Subpt. P, App.1, 3.00(F)(4). On March 28, 2004, Plaintiff received another “Blood Gas Report,” where his PCO2 measured at 48.8 mm. Hg, and his P02 measured at 46.3. (Id. at 252.)

Listing 3.02(C)(2) provides that a person meets the criteria for this section if the medical evidence shows as follows:

Arterial blood gas values of PO2 and simultaneously determined PCO2

1 measured while at rest (breathing room air, awake and sitting or
 2 standing) in a clinically stable condition on at least two occasions, three
 3 or more weeks apart within a 6-month period, equal to or less than the
 4 values specified in the applicable table III-A or III-B or III-C.

5 20 C.F.R. Subpt. P, App.1, 3.02(C)(2).

6 The tables associated with this Listing indicate that an individual, with
 7 findings occurring “at least two occasions, three or more weeks apart within a 6-
 8 month period” would meet the requirements of Listing 3.02(C)(2) in at least these
 9 two instances: (i) a PCO₂ measurement of 40 mm. Hg or above with a
 10 simultaneous PO₂ measurement of 55 mm. Hg or less; or (ii) with a PCO₂
 11 measurement of 38 mm. Hg with a simultaneous PO₂ measurement of 57 mm. Hg.
 12 or less. Id. While Plaintiff meets the listings as to the PCO₂ and P02
 13 measurements, Plaintiff fails to meet the duration requirement specified in the
 14 Listing in that the examinations are only two days apart, rather than at least three
 15 weeks apart in a six-month period. Thus, Plaintiff does not meet Listing
 16 3.02(C)(2).

17 Based on the foregoing, the Court finds that the ALJ relied on substantial
 18 evidence to determine that Plaintiff did not meet or equal Listing 3.02(C)(2).⁶
 19 Thus, there was no error.

20 **D. The ALJ Properly Evaluated Plaintiff’s Credibility.**

21 Plaintiff contends the ALJ erroneously assessed Plaintiff’s credibility by
 22 failing to provide clear and convincing reasons for rejecting his subjective
 23 symptoms. (JS at 11-16.) The Court disagrees.

24
 25 ⁶ Plaintiff also argues that additional tests indicating “some decrease in lung
 26 capacity,” but with no reported oxygen and carbon dioxide findings, viewed in
 27 conjunction with the March 26 and 28, 2004 findings, are consistent with meeting
 28 Listing 3.02(C)(2). (JS at 12.) However, Plaintiff fails to provide any authority to
 support this contention. See Roberts, 66 F.3d at 182; see also Vick, 57 F. Supp.
 2d at 1087.

1 **1. Applicable Law.**

2 An ALJ's credibility finding must be properly supported by the record and
3 sufficiently specific to ensure a reviewing court that the ALJ did not arbitrarily
4 reject a claimant's subjective testimony. Bunnell v. Sullivan, 947 F.2d 341, 345-
5 47 (9th Cir. 1991). An ALJ's assessment of pain severity and claimant credibility
6 is entitled to "great weight." Weetman v. Sullivan, 877 F.2d 20, 22 (9th Cir.
7 1989); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1986). When, as here, an
8 ALJ's disbelief of a claimant's testimony is a critical factor in a decision to deny
9 benefits, the ALJ must make explicit credibility findings. Rashad v. Sullivan, 903
10 F.2d 1229, 1231 (9th Cir. 1990); Lewin v. Schweiker, 654 F.2d 631, 635 (9th Cir.
11 1981); see also Albalos v. Sullivan, 907 F.2d 871, 874 (9th Cir. 1990) (an implicit
12 finding that claimant was not credible is insufficient).

13 Under the "Cotton test," where the claimant has produced objective medical
14 evidence of an impairment which could reasonably be expected to produce some
15 degree of pain and/or other symptoms, and the record is devoid of any affirmative
16 evidence of malingering, the ALJ may reject the claimant's testimony regarding
17 the severity of the claimant's pain and/or other symptoms only if the ALJ makes
18 specific findings stating clear and convincing reasons for doing so. See Cotton v.
19 Bowen, 799 F.2d 1403, 1407 (9th Cir. 1986); see also Smolen v. Chater, 80 F.3d
20 1273, 1281 (9th Cir. 1996); Dodrill v. Shalala, 12 F.3d 915, 918 (9th Cir. 1993);
21 Bunnell, 947 F.2d at 343.

22 To determine whether a claimant's testimony regarding the severity of his
23 symptoms is credible, the ALJ may consider, *inter alia*, the following evidence:
24 (1) ordinary techniques of credibility evaluation, such as the claimant's reputation
25 for lying, prior inconsistent statements concerning the symptoms, and other
26 testimony by the claimant that appears less than candid; (2) unexplained or
27 inadequately explained failure to seek treatment or to follow a prescribed course of
28 treatment; (3) the claimant's daily activities; and (4) testimony from physicians

1 and third parties concerning the nature, severity, and effect of the claimant's
2 symptoms. Thomas, 278 F.3d at 958-59; see also Smolen, 80 F.3d at 1284.

3 Social Security Ruling ("SSR") 96-7p further provides factors that may be
4 considered to determine a claimant's credibility such as: 1) the individual's daily
5 activities; 2) the location, duration, frequency, and intensity of the individual's
6 pain and other symptoms; 3) factors that precipitate and aggravate the symptoms;
7 4) the type, dosage, effectiveness, and side effects of any medication the
8 individual takes or has taken to alleviate pain or other symptoms; 5) treatment,
9 other than medication, the individual receives or has received for relief of pain or
10 other symptoms; 6) any measures other than treatment the individual uses or has
11 used to relieve pain or other symptoms (e.g., lying flat on his or her back, standing
12 for 15 to 20 minutes every hour, or sleeping on a board); and 7) any other factors
13 concerning the individual's functional limitations and restrictions due to pain or
14 other symptoms. SSR 96-7p.

15 **2. Analysis.**

16 Plaintiff contends the ALJ failed to provide clear and convincing reasons to
17 reject Plaintiff's subjective symptoms primarily related to sleep apnea. (JS at 11-
18 16.) In the decision, the ALJ stated Plaintiff received no treatment for sleep apnea
19 after 2002, and required no long-term oxygen use. (AR at 23.) Plaintiff, however,
20 argues that the record evidences several instances of treatment and disabling
21 symptoms after 2002. (JS at 11-16.) Plaintiff also argues that his blood gas
22 readings have failed to return to normal, presumably to support a disabling
23 pulmonary condition. (Id.)

24 At the hearing, Plaintiff testified, inter alia, that he suffered primarily from
25 sleep apnea, and pain in his right shoulder, back, and left thigh. (AR at 21, 41-44.)
26 In the decision, the ALJ rejected Plaintiff's testimony regarding her subjective
27 complaints for several reasons, including the following: (i) discrepancies between
28 Plaintiff's testimony and complaints to his physicians; (ii) the lack of recent or

1 ongoing treatment for sleep apnea; (iii) overall conservative treatment for
2 Plaintiff's disabling complaints; and (iv) other evidence related to his functional
3 limitations. (Id. at 22-23.)

4 Relying upon Plaintiff's own description of his physical limitations in his
5 disability application and throughout the record, the ALJ found Plaintiff not be a
6 credible witness and discredited the severity of his subjective complaints. (Id.) In
7 his disability application, Plaintiff stated that he is unable to bathe or put socks on
8 without assistance, unable to do chores, yard work, watch television, or drive due
9 to his injuries and inability to stand or sit for extended periods, requires a cane to
10 walk, and uses a CPAP system to sleep due to his sleep apnea. (Id. at 105-12.)

11 However, the ALJ discredited Plaintiff's complaints as follows:

12 [Plaintiff] has not been observed to use a cane in his examinations. The
13 claimant alleges a very limited lifestyle in his disability application, but
14 told his treating orthopedist that he has pain with *prolonged* use of his
15 upper extremities, *repetitive* postural changes, heavy lifting, and
16 *prolonged* walking and upper extremities, *repetitive* postural changes,
17 heavy lifting, and *prolonged* walking and standing. The claimant
18 described his capacity quite differently in the two settings, and this
19 inconsistency damages his credibility.

20 (Id. at 22-23 (citations omitted).) The record supports the ALJ's finding. (Id. at
21 105-12, 262); see also Thomas, 278 F.3d 958-59; Smolen, 80 F.3d at 1284;
22 SSR 96-7p.

23 Next, the ALJ discounted Plaintiff's credibility by relying on the lack of
24 ongoing treatment for sleep apnea, and conservative treatment for Plaintiff's
25 conditions. (AR at 23.) The ALJ stated:

26 The claimant states that his sleep apnea is his biggest problem,
27 however, he has not seen a doctor for treatment of this problem since
28 2002. It seems reasonable that if it truly continued to be a debilitating

1 problem, he would have sought treatment for it within the last four
2 years

3 The claimant takes maintenance medications for his asthma,
4 allergies, diabetes, and hypertension, but does not have any medication
5 for pain or sleep. This would indicate that the claimant's levels of pain
6 and sleep are really not so very bothersome

7 The claimant has not had any referral for surgery, acupuncture,
8 chiropractic treatments, long-term oxygen use, talk therapy for sleep
9 problem, or other aggressive treatment modalities. If the claimant's
10 doctors believed the claimant to be debilitated by his problems, surely
11 they would have pursued more aggressive treatments.

12 (Id. (citations omitted).) The record supports the ALJ's finding. Contrary to
13 Plaintiff's contentions, there is no evidence of recent treatment for sleep apnea,
14 beyond the use of a CPAP machine for assistance with sleeping. (AR at 197-98,
15 350-85.) During his treatment for sleep apnea, the ALJ noted that it was
16 monitored with a CPAP machine and appeared to alleviate Plaintiff's difficulty
17 sleeping. (Id. at 197-98, 350-85, 415.) Notably, there is no medical evidence
18 suggesting that Plaintiff was functionally limited due to the severity, if any, of his
19 sleep apnea. (Id. at 268-71, 346.) There is also no evidence that Plaintiff is taking
20 any medication for his sleep apnea, such as a sleep aid. (Id. at 149.) Moreover,
21 Plaintiff only received conservative treatment for his sleep apnea and other
22 complaints, as indicated by the ALJ. (Id. at 23.) Accordingly, the ALJ properly
23 discounted Plaintiff's credibility based upon Plaintiff's overall conservative
24 treatment, and lack of ongoing treatment for sleep apnea and other subjective
25 complaints. See Thomas, 278 F.3d at 958-59; see also Smolen, 80 F.3d at 1284;

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1 SSR 96-7p.⁷

2 Finally, the ALJ based his adverse credibility determination upon other
3 evidence in the record to concerning Plaintiff's functional limitations and
4 restrictions due to subjective symptoms. (AR at 23.) The ALJ provided:

5 The claimant stated that he recovered fully from his automobile accident
6 of December, 2004 and returned to truck driving. There has been no
7 intervening event between when he returned to work and when he quit
8 that might explain why or how his condition allegedly deteriorated. The
9 record does not reflect an increase in frequency or aggressiveness of
10 treatment from the time the claimant worked and when he alleges he
11 became disabled.

12 (Id. (citations omitted).) The record substantiates the ALJ's finding, as Plaintiff
13 stated he recovered fully after his accident, and the record does not support any
14 major physical deterioration. (AR at 104.) While Plaintiff appears to argue the
15 automobile accident was related to his sleep apnea, there is nothing in the record
16 to support this contention. Thus, the ALJ properly discounted Plaintiff's
17 credibility. SSR 96-7p.

18 Based on the foregoing, the Court finds that the ALJ provided clear and
19 convincing reasons, supported by substantial evidence, for rejecting Plaintiff's
20 testimony regarding his subjective symptoms. Thus, there was no error.

21 **E. This Case Should Be Remanded for Further Administrative**
22 **Proceedings.**

23 The law is well established that remand for further proceedings is
24 appropriate where additional proceedings could remedy defects in the
25 Commissioner's decision. Kail v. Heckler, 722 F.2d 1496, 1497 (9th Cir. 1984).

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27 ⁷ Plaintiff also argues that he suffered from a pulmonary condition, which
28 equaled Listing 3.02(C)(2). (JS at 11-16.) The Court has already addressed this
issue and rejected Plaintiff's contention. See supra, Discussion Part III.C.

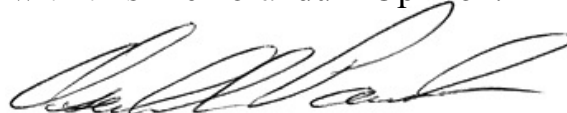
1 Remand for payment of benefits is appropriate where no useful purpose would be
2 served by further administrative proceedings, Kornock v. Harris, 648 F.2d 525,
3 527 (9th Cir. 1980); where the record has been fully developed, Hoffman v.
4 Heckler, 785 F.2d 1423, 1425 (9th Cir. 1986); or where remand would
5 unnecessarily delay the receipt of benefits. Bilby v. Schweiker, 762 F.2d 716, 719
6 (9th Cir. 1985). Here, the Court concludes that further administrative proceedings
7 would serve a useful purpose and remedy the administrative defects discussed
8 herein.

9 **IV.**

10 **ORDER**

11 Pursuant to sentence four of 42 U.S.C. § 405(g), IT IS HEREBY
12 ORDERED THAT Judgment be entered reversing the decision of the
13 Commissioner of Social Security and remanding this matter for further
14 administrative proceedings consistent with this Memorandum Opinion.

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16 Dated: November 23, 2009



17 **HONORABLE OSWALD PARADA**
18 United States Magistrate Judge
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